

IN THE SUPREME COURT OF THE STATE OF DELAWARE

DAVID WILLIAMS,	§
	§
Defendant Below-	§ No. 366, 2010
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for New Castle County
	§ Cr. ID 0805027568
Plaintiff Below-	§
Appellee.	§

Submitted: October 29, 2010

Decided: January 26, 2011

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 26<sup>th</sup> day of January 2011, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) The defendant-appellant, David Williams (Williams), filed this appeal from the Superior Court's denial of his first motion for postconviction relief. We find no merit to the issues Williams raises on appeal. Accordingly, we affirm the Superior Court's judgment.

(2) The record reflects that Williams was convicted following a stipulated bench trial of one count of distribution of heroin within 300 feet of

a park.<sup>1</sup> Upon the State's motion, the Superior Court declared Williams to be a habitual offender and sentenced him to ten years at Level V incarceration. This Court affirmed on direct appeal.<sup>2</sup> In December 2009, Williams filed his first motion for postconviction relief, which the Superior Court denied. This appeal followed.

(3) In his opening brief on appeal, Williams contends that his trial counsel was ineffective in several respects and that his counsel's cumulative errors denied him the constitutional right to the effective assistance of counsel at trial. Williams also argues that the Superior Court committed plain error in determining that the police had reasonable suspicion to stop him.

(4) In reviewing the Superior Court's denial of postconviction relief, this Court first must consider the procedural requirements of Rule 61 before addressing any substantive issues.<sup>3</sup> Rule 61(i)(4) bars litigation of any claim that was formerly adjudicated in the proceedings leading to the judgment of conviction and any subsequent appeal.<sup>4</sup> In this case, Williams

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<sup>1</sup> Williams agreed to a stipulated bench trial in order to preserve his right to appeal the Superior Court's denial of his pretrial suppression motion. In exchange, the State agreed to drop several criminal charges pending against Williams.

<sup>2</sup> *Williams v. State*, 2009 WL 2959644 (Del. Sept. 16, 2009).

<sup>3</sup> *Younger v. State*, 580 A.2d 552, 554 (Del. 1990).

<sup>4</sup> Del. Super. Ct. Crim. R. 61(i)(4) (2010). Rule 61(i)(4) provides that, "Any ground for relief that was formerly adjudicated, whether in the proceedings leading to the judgment of conviction, in an appeal, in a postconviction proceeding, or in a federal habeas corpus proceeding, is thereafter barred, unless reconsideration of the claim is warranted in the interest of justice."

argued in his direct appeal that the Superior Court erred in finding that the police had reasonable suspicion to stop him. We rejected his argument. We do not find reconsideration of this previously adjudicated claim to be warranted in the interest of justice.<sup>5</sup>

(5) To prevail on his claims of ineffective assistance of counsel, Williams was required to establish that (i) his trial counsel's representation fell below an objective standard of reasonableness; and (ii) but for counsel's unprofessional errors, the outcome of his trial would have been different.<sup>6</sup> Williams was required to set forth and substantiate concrete allegations of actual prejudice<sup>7</sup> in order to overcome the "strong presumption" that counsel's representation was professionally reasonable.<sup>8</sup>

(6) Williams argues that his trial counsel was ineffective because he failed to: (i) investigate and prepare for the suppression hearing; (ii) cite case law in his suppression motion; (iii) admit the surveillance videotape at the suppression hearing; and (iv) object at the suppression hearing to the officer's testimony that, prior to his detention, the officers saw Williams loitering with a known drug dealer named Craig Parker. Williams contends that these errors, cumulatively, caused him actual prejudice.

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<sup>5</sup> Reconsideration of a previously adjudicated claim is warranted in the interest of justice only if the defendant can show that "subsequent legal developments have revealed that the trial court lacked the authority to convict or punish" the defendant. *Flamer v. State*, 585 A.2d 736, 746 (Del. 1990).

<sup>6</sup> *Strickland v. Washington*, 466 U.S. 668, 687-88, 692 (1984).

<sup>7</sup> *Younger v. State*, 580 A.2d at 556.

<sup>8</sup> *Strickland v. Washington*, 466 U.S. at 689.

(7) With respect to his first claim of ineffectiveness, Williams contends that counsel was not adequately prepared for the suppression hearing because he failed to argue that Williams lived in the “high crime” area where he was observed by police and, thus, had a legitimate reason for being there. Williams also argues that counsel was ineffective for failing to correct the trial court when it stated that Williams was observed in a high crime area at night when, in fact, Williams was arrested at 10 o’clock in the morning. The Superior Court rejected Williams’ assertion of ineffective assistance because it concluded that, even assuming counsel had erred, Williams failed to establish a reasonable probability that the outcome of suppression hearing would have been different if counsel had acted differently. We agree with the Superior Court’s conclusion. Even if counsel had argued that Williams lived in the high crime area where he was observed or had corrected the trial court’s misstatement that Williams was observed at night, we find no reasonable probability of a different ruling on the suppression motion. The totality of the other evidence presented at the suppression hearing supported a finding that the officers had reasonable and articulable suspicion to stop Williams.

(8) Furthermore, we reject Williams’ assertion that trial counsel was ineffective for failing to cite case law in the motion to suppress and for

failing to submit the surveillance video as evidence at the suppression hearing. A trial court's determination of a suppression motion is dependent upon the totality of the specific facts presented in the case before it. Thus, even if we assume trial counsel erred in failing to cite to analogous case law in the suppression motion, Williams has not, and cannot, cite to any case law that would have changed the outcome of the Superior Court's ruling that the totality of the specific circumstances in his case justified the officers' stop of Williams. Thus, we find no prejudice. Similarly, Williams can show no prejudice from counsel's failure to admit the surveillance video into evidence. Both the prosecutor and defense counsel had reviewed the surveillance video prior to the hearing and determined that the videotape was taken from so far away as to offer nothing of evidentiary value to contradict the testimony of the officer who conducted the surveillance. Williams has not, and cannot, articulate any specific prejudice to him from counsel's failure to submit the videotape to the Superior Court for review.

(9) Finally, Williams argues that counsel was ineffective for failing to object when the testifying officer stated that, prior to being stopped, Williams was observed walking with an individual named Craig Parker, and that both Williams and Parker were known to police through prior contact. Williams argues that this testimony was inadmissible speculation because

the officer presented no evidence that Parker had ever been stopped or questioned by the police that day to confirm his identity. Moreover, Williams contends that his prior criminal history and his known associations were irrelevant and inadmissible under Delaware Rule of Evidence 404(b).<sup>9</sup>

(10) We reject this contention. First, contrary to Williams' assertion, defense counsel, in fact, did object when the testifying officer referred to prior police contact with Williams and Parker. The Superior Court overruled the objection, however, on the ground that prior criminal history and a defendant's associations are relevant factors for a court to consider in determining whether the totality of the circumstance support a finding of reasonable suspicion to stop. We agree with that conclusion.<sup>10</sup>

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>9</sup> Del. R. Evid. 404(b) provides, "Evidence of other crimes, wrongs or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake or accident."

<sup>10</sup> See, e.g., *Monroe v. State*, 2006 WL 3482182 (Del. Dec. 4, 2006).